Title: Requirement for State Agencies to Contract with a Recovery Audit Contractor (RAC)
Section: 6411
State Mandate

Overview: Section 6411 of the Patient Protection and Affordable Care Act (ACA) requires State Medicaid agencies to contract with a Recovery Audit Contractor (RAC) to prevent provider fraud, waste, abuse and improper payments, and to take administrative action to recoup overpayments, as may be necessary. States are required to contract with one or more RACs prior to December 31, 2010.

States will need to prepare a State Plan Amendment (SPA) to account for the use of the RAC. The SPA will need to include: 1) language that describes that payments will be made to the RAC only from amounts that the RAC recovers on a contingency basis from overpayments and in an amount specified by the State for underpayments; 2) information about the State's process through which entities that are subject to overpayment may appeal adverse determinations; and 3) an adequate outline of how the RAC program is carried out in accordance with such requirements as specified by the Secretary of Health and Human Services. These requirements are as follows:

- Amounts expended by the State to carry out the RAC program expenditures will be considered administrative expenditures reimbursable at the 50% Federal Financial Participation (FFP) rate under Section 1903(a)(7);
- Section 1903(d) relating to reporting and adjustments to FFP related to overpayments will apply to amounts recovered under the RAC program; and
- The State and its RAC will coordinate their recovery audit efforts with other entities performing audits related to payments under the State plan (e.g., Office of Inspector General, Medicaid Fraud Control Unit)

Targeted Population: Groups affected by this provision include providers subject to audit and claims review, as well as State Medicaid staff who will be required to assist the RAC with policy issues, requests for information, and will need to establish an appeals process for providers who dispute the claims overpayment.

Fiscal Impact: Nevada operates a statewide Surveillance and Utilization Review (SUR) program to safeguard against unnecessary or inappropriate use of services and prevent inappropriate (excess) payments. The ACA mandates that Medicaid agencies contract with a RAC to further prevent provider fraud, abuse and improper payments, and to take appropriate action, as necessary, to recover overpayments and adjust any underpayments to providers. Because the

RAC will be paid on a contingency basis, this requirement is not expected to have a direct fiscal impact on the Division.

However, resources that are currently being expended on SUR-related activities may be redirected to help the RAC with its activities. SUR's recoupment of payments will likely decrease as staff will be required to spend more time helping the RAC and less on their own activities. Current experience with the federal CMS Medicaid Integrity Contractors (MIC) has shown that SUR and DHCFP Program staff has needed to educate the MIC on Nevada Medicaid's policies and provide extensive information regarding payment rates and methodologies. Current requests from MIC are taking anywhere from nine to eighteen hours to complete, and consequently, this time is taken away from the daily investigations being conducted by the State's SUR's unit.

Applicability to Nevada: Nevada will be affected by the provisions set forth in Section 6411. The RFP process will be extensive and will require participation from DHCFP staff along with staff from the Office of the Attorney General. DHCFP is in contact with states that have already conducted RAC procurements to obtain copies of their RFPs for DHCFP's review. Furthermore, completing the SPA will require time and resources of DHCFP staff.

Once an RFP is issued and a RAC is selected, the SUR unit will be responsible for supplying data and educating the selected vendor on Nevada policies and procedures. As a result, this will take SUR staff away from pursuing their own cases. Moreover, coordination of efforts will be critical. Recently, DHCFP experienced difficulty when two separate investigations on the same provider (one by MIC and another by SUR) were being undertaken at the same time, interrupting DHCFP's regular workflow because SUR staff was forced to postpone their investigation to determine if the MIC was reviewing the same claims and the same issues. Additionally, having two separate entities investigating a provider at the same time can cause substantial confusion. Adding a RAC will require significant coordination efforts among the three groups, which could potentially be very time-consuming.

Regarding the appeals process, DHCFP will be responsible for ensuring that an adequate appeals process is available to providers to dispute actions recommended by the RAC. Consequently, the workload of SURS, the Hearings Unit, and the Deputy Attorneys General assigned to DHCFP will likely increase. In addition, this will increase the administrative costs associated with the hearing process.

After the RAC is paid its contingency fee, DHCFP is required to reimburse CMS for the federal share of the recovery. DHCFP's Accounting Unit will need to be able to differentiate recoveries

that are RAC-related versus recoveries from other sources. Along those same lines, DHCFP will need to have a high level of involvement and oversight of the RAC to ensure appropriate professional conduct in pursuing recovery of overpayments.